



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: September 28, 2017

TO: Ms. Leslie W. Ledogar, Regulatory Specialist
Department of Insurance

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 21 DE Reg. 192 [Department of Insurance Health Insurance Claim Review Reg. [21 DE Reg. 192 (9/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Insurance's proposal to amend its regulations covering the internal review and utilization review processes which enable covered persons to contest adverse insurer decisions. This proposed regulation was published as 20 DE Reg. 192 in the September 1, 2017 issue of the Register of Regulations. This proposed regulation (amending Part 1301) complements the other proposed regulation (amending Part 1315).

As background, State-regulated health insurers must participate in a Department of Insurance-regulated internal review and utilization review system consistent with 18 DE Admin Code Part 1301. The proposed amendments are intended to implement H.B. No. 100 which was enacted earlier this year. That legislation authorizes the Attorney General's Office, through employees or contractors, to represent individuals contesting adverse insurer decisions involving substance abuse treatment. The Attorney General's Office issued a second RFQ in August soliciting private attorney applications to provide legal assistance in this context. Issuance of the initial RFQ apparently did not result in viable applications. H.B. No. 100 (lines 51-53) also requires the Department of Insurance to ensure notice to covered persons of the availability of DOJ assistance.

The SCPD has the following observations.

First, although H.B. No. 100 (lines 37-38) and the current RFQ contemplate retention of attorneys to represent individuals in substance abuse insurance disputes, it may be preferable to not categorically limit

DOJ assistance to attorneys. For example, non-attorney family members and providers are included in the scope of “authorized representatives” in the current regulation. See 18 DE Reg. 1301.2.0, definition of “authorized representative”. It would therefore be anomalous to limit DOJ assistance solely to attorneys. The Department could consider inserting the following underlined sentence to the proposed revision to §2.0:

In cases involving the existence or scope of private or public coverage for substance abuse treatment, an attorney retained or employed by the Delaware Department of Justice may serve as an authorized representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right of representation. Such attorney may authorize an expert to act on the attorney’s behalf in proceedings within the scope of this regulation. The Department of Justice may be reached by calling 302-577-4206.¹

The addition of the sentence would clarify that the DOJ could utilize substance abuse experts to represent covered persons in mediation (§4.0), IHCAP (§5.0), and expedited IHCAP (§6.0) proceedings. Cf. §2.0, definition of “provider” which lists several types of experts who could be well qualified to present cases on behalf of a covered person. This option would preserve DOJ resources by allowing the DOJ to send an expert to a mediation proceeding in lieu of an attorney.

Second, the Department should consider providing a specific DOJ website address (with description of its substance abuse legal assistance program) in addition to a phone number.

Third, the Department should reconsider the proposed notice of DOJ assistance in §4.0. Consider the following:

A. The notice is “buried in the boilerplate” and not prominent. To fulfill the spirit of H.B. No. 100, the Department could consider a separate heading (e.g., “Substance Abuse Treatment Denials: Special Assistance”) followed by a brief explanation and DOJ contact information (website and phone number).

B. The notice only informs an aggrieved person of the availability of DOJ assistance with mediation. See §4.0. This is misleading since DOJ assistance is also available in the internal review process (§3.0), IHCAP procedure (§5.0), and expedited IHCAP procedure (§6.0). Apart from carrier notice of the availability of DOJ assistance in contexts other than mediation, the Department could consider including a notice of DOJ assistance as a complement to the notice in §5.4.

C. The proposed notice indicates that DOJ assistance is only available if “you are approaching the deadline for filing your appeal”. This limitation is not authorized by law and will deter requests for DOJ assistance.

D. To encourage individuals to consider DOJ assistance, it would be preferable to clarify that DOJ assistance is “free”. This could be easily accomplished by revising the relevant language to “...receive free legal assistance”.

¹H.B. No. 100 (line 24) contemplates the use of “experts” in substance abuse insurance disputes. The term “expert” is not defined and could encompass professionals in the field of addiction who, under attorney supervision, could appear on a covered person’s behalf in proceedings authorized by 18 DE Admin Code Part 1301.

The SCPD is endorsing the regulation subject to the above recommended revisions.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed regulation.

cc: The Honorable Matthew Denn, Attorney General
Mr. Jim Martin, Chair-DSAMH Advisory Council
Ms. Barbara Messick, Chair-DPBHS Advisory Council
The Honorable Helene Keeley
The Honorable Margaret Rose Henry
The Honorable Stephanie Hansen
The Honorable Anthony Delcollo
The Honorable Dave Lawson
The Honorable Michael Mulrooney
The Honorable Ruth Briggs King
The Honorable Timothy Dukes
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